



ZONING BOARD OF ADJUSTMENT

Draft Minutes

August 11, 2020 - 7:30 pm @ Community Development Department

Physical Location: 3 North Lowell Road (Community Development Department)

Live Broadcast: WCTV Channel 20 – Local Cable TV

Live Stream: <http://www.wctv21.com/>

Attendance:

Chairman Mike Scholz- present (via Zoom)

Vice Chair Bruce Breton- excused

Pam Skinner, Secretary- excused

Neelima Gogumalla- present (at Community Development)

Nick Shea- present (via Zoom)

Betty Dunn, alternate- present (via Zoom) seated for Vice Chair Breton

**Kevin Hughes, alternate- present (via Zoom) seated for Pam Skinner as Secretary
(attendance taken by roll call vote)**

Staff:

Brian Arsenault- ZBA Administrator/ Code Enforcement (joined at 7:55pm)

Anitra Lincicum- minute taker

“As Chair of the ZBA, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, the public body is authorized to meet electronically. Please note that all votes that are taken during the meeting shall be done by roll call vote only.

Let’s start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during the meeting, which is required under the Right-to-Know law.”

Public Hearing

Case #19-2020: Parcel 17-L-78 and 17-L-78AL-1

Applicant - Benchmark Engineering, Inc.

Owner - Brett and Larissa Nigro

Location - 28 Horseshoe Road

**Zoning District - Residential A District and Cobbetts Pond & Canobie Lake
Watershed Protection Overlay District (WPOD)**

Variance Relief is requested from **Section(s) 406.2, 702 & Appendix A-1**, to allow construction of an addition to the existing year-round single-family dwelling (SFD). Specifically, from **Sec. 406.2** to expand the volume of the SFD from 2,725 sf to 2,917 sf in area and from 59,550 cu/ft to 62,621 cu/ft in volume, where the ordinance does not allow an increase in the area and/or volume of the structure. And from **Sec. 702 & Appendix A-1** to allow the addition a 15’ side yard setback, where 30’ is required.

47
48 Mr. Hughes read the case and the list of abutters into the record. Mr. Shea read the letter of
49 authorization into the record.
50

51 Mr. Joe Maynard of Benchmark Engineering addressed the Board and is representing the
52 applicant. Mr. Maynard stated that the property fronts Cobbetts Pond. There was a variance
53 granted in 2016 for a screen room addition primarily for where this addition is proposed. Mr.
54 Maynard stated that there have been some issues with the shape and size of the addition. There
55 was an issue with a chimney jog that impacted the shape of the house. Mr. Maynard is now
56 requesting a 12 by 16 addition to the house which is larger than the original screen room that was
57 requested. There is also an application with the State of New Hampshire to amend the original
58 approval. The proposed building coverage would go up to 16.7%. The impervious coverage is
59 27.1% not 26.8% according to Mr. Maynard.
60

61 Mr. Shea asked why the applicant delayed two years to move forward with the work. Mr.
62 Maynard stated that Mr. Arsenault picked up on the fact that the building permit had expired and
63 that a new application would need to be applied for.
64

65 Mr. Maynard reviewed the 5 criteria contained in the public packet. The size of this addition is
66 different than what has been previously requested. The lot is a pre-existing lot of record and it
67 will be similar to the structures that are on the property allowing the homeowner to make their
68 home more usable.
69

70 Ms. Gogumalla asked what the previous lot line request was. Mr. Maynard stated it was 15 feet
71 prior and it is still 15 feet now. Mr. Maynard stated that the addition is about 10 feet off the grade
72 of what is currently in the home. The original approval is for a screened porch.
73

74 Chairman Scholz stated that this appears to be a different application from what was previously
75 requested. Ms. Dunn asked what is the area of land disturbance that will need to occur. Mr.
76 Maynard stated that the area of disturbance will really be a strip of 10 feet down the side of the
77 house. Ms. Dunn stated that she is having a hard time with the hardship. Ms. Dunn stated that
78 there is both a substantial sized house and a garage on the lot and she would like Mr. Maynard to
79 address the issue of hardship. Mr. Maynard stated that the deck on the house is unusable
80 currently. Mr. Maynard stated that the foundation is necessary to incorporate the chimney jog
81 that exists. Mr. Maynard stated that the current porch is not usable and it blocks stairway access
82 as it currently exists. Mr. Maynard stated that the applicant does not currently use the space.
83

84 Mr. Arsenault stated that they have heard testimony that the area is going to be 3 season and he
85 would like to be sure that the addition is going to reflect the application. Mr. Maynard stated that
86 the proposal that has come before the Board is a 3-season porch and that is what the testimony
87 states.
88

89 Mr. Hughes read the letter from the Conservation Commission who has no issues with the plan
90 as presented.
91

92 At this time, Chairman Scholz offered the phone number for the public to call in with public

comment.

Mr. Arsenault stated that the application has a 2 story, 3 season structure on the plan.

Mr. Maynard has a letter from the abutter, the Fontaine family who were in support of the project as presented. The Fontaine family has no objection to the project.

Chairman Scholz asked about the mitigation for run off. Mr. Maynard stated that the original plan has both drip line infiltration at about 8 inches deep by 18 inches wide. Now, it is 18 inches deep as well at the request of Planning Board. Mr. Maynard explained that the dotted line around the structure is the roof. Ms. Dunn asked about a 3-season structure and the stipulation that there be no plumbing and no HVAC; she asked if that might be realistic based on the proposed plan. Mr. Maynard stated that there is no plumbing planned but he does not know about the HVAC.

A motion was made by Mr. Shea to enter Deliberative Session. Seconded by Ms. Dunn. Roll call vote: Chairman Scholz, Ms. Dunn, Mr. Shea, Ms. Gogumalla, Mr. Hughes- yes. Vote 5-0. Motion passes.

Ms. Gogumalla stated that she does understand that the applicant has the right to do what they would like but she does wonder how 2 decks right next to each other does not appear to be a hardship. Ms. Gogumalla stated that if the previous one is not useable, she has a hard time seeing why this is a hardship. Ms. Dunn and Mr. Shea stated that the existing small deck would be taken down and new living space would be put in its place. This proposal is an addition with a frost wall and a foundation. Chairman Scholz stated that he is struggling with the size of the property. There is an expansion on this lot and he does not see a marked improvement on the drainage quality. Chairman Scholz does not think it meets the first two criteria but he does believe it meets the 3rd and 4th criteria. Chairman Scholz is also not sure how there is a hardship.

Mr. Shea does not see a distinction in the usage of a porch and a 3-season room. Mr. Hughes does not believe it meets the hardship criteria. Ms. Dunn is having a hard time with both the hardship criteria and the spirit and intent of the ordinance. Ms. Dunn stated that the road is not something that was built to handle that number of large houses. Ms. Dunn stated that there was bacteria found in the pond recently that is often related to use of the pond. Ms. Dunn stated that this expansion does not appear to meet the criteria of the hardship. Mr. Shea stated that a 3-season porch would not impact the number of people in the home and he believes that homeowners have the right to enjoy their home.

A motion was made by Ms. Gogumalla to deny Case #19-2-2: Parcel 17-L-78 and 17-L-78AL-1 as requested per plan dated July 8th, 2020 (Sheet 2). Seconded by Mr. Hughes. Roll call vote: Ms. Gogumalla, Ms. Dunn, Chairman Scholz, Mr. Hughes- yes to deny. Mr. Shea- no to deny as he believes it meets the 5 criteria.

Vote 4-1.

Motion passes.

The Chair advised of the 30-day appeal period.

Reasons for denial:

Ms. Gogumalla- 1 (public interest), 2 (spirit of the ordinance) and 5 (hardship)

Ms. Dunn- 1 (public interest), 2 (spirit of the ordinance) and 5 (hardship)

Chairman Scholz- 1 (public interest), 2 (spirit of the ordinance) and 5 (hardship)

Mr. Hughes- 5 (hardship)

Case #20-2020: Parcel 17-I-350

Applicant - Benchmark Engineering, Inc.

Owner – Michael & Sherry Abruzese

Location – 104 Range Road

Zoning District – Rural District

Variance Relief is requested from **Section(s) 406.2, 702 & Appendix A-1**, to allow construction of an addition to the existing year-round single-family dwelling (SFD). Specifically, from **Sec. 406.2** to expand the volume of the SFD from 2,410 sf to 2,480 sf. in area and from 22,400 cu/ft to 24,000 cu/ft in volume, where the ordinance does not allow an increase in the area and/or volume of the structure. And from **Sec. 702 & Appendix A-1** to allow the addition a 12' side yard setback from the northwesterly side lot line and the existing SFD a 15' side yard setback from the southeasterly side lot line, where 30' is required. To allow the SFD a 34' front yard setback from the right of way line of Range Road, where 50' is required.

Mr. Hughes read the case, the abutters' list and the letter of authorization into the record.

Mr. Joseph Maynard from Benchmark Engineering addressed the Board. Mr. Maynard stated that the bulkhead would need to be removed and a new structure would be added and would come up to grade on the house. Building coverage would be 13.5% of the lot and 34.2% would be the total coverage and some of the impervious surface would be removed and porous pavers would be added to the site.

Mr. Maynard stated that they are looking to expand the volume as part of the application.

Chairman Scholz asked if there was any additional relief being requested from what is there now. Mr. Arsenault stated that the applicant did not have a full plot plan when they first applied. There is a request for 14 feet.

Ms. Dunn stated that it increases the volume but not the footprint of the home. Mr. Maynard stated that it is increasing the footprint and is squaring up the side of the plan.

Mr. Maynard read the 5 criteria contained in the public packet. Chairman Scholz asked how old the house and the property are. Mr. Maynard stated the house is likely from the 1950's. Chairman Scholz asked about the well. Mr. Maynard stated that the property is on the Pennichuck water system and "ST" stands for septic tank on the plan. Mr. Maynard stated that the way the plan is laid out, there would be fragmented space in the house if the proposed change was moved to other location. Ms. Dunn asked about the Watershed ordinance. Mr. Maynard stated that there is no increase in impervious coverage.

186 The paved driveway is being replaced with a permeable product to help mitigate the increase in
187 volume. Ms. Dunn asked about roof run off. Mt. Maynard stated that that is not required under
188 the ordinance.

189
190 Chairman Scholz opened public comment and Mr. Hughes read the letter from the Conservation
191 Commission into the record. The Conservation Commission recommended additional storm
192 water retention as part of the plan. Chairman Scholz gave the phone number for the public to call
193 in at this time.

194
195 Mr. Maynard stated that he could agree to do some drip line infiltration to help mitigate but he is
196 trying to stay away from the septic area and he would like to avoid digging up the yard when
197 they are only working on a small area of the yard. The drip line trenches could be built at a
198 reasonable cost to the homeowner according to Mr. Maynard.

199
200 Ms. Dunn asked if Mr. Maynard would object if the Board omitting the last sentence of the
201 variance request. Ms. Dunn sees no change to the front yard setback as it is all pre-existing.
202 Chairman Scholz returned to a previous part of the conversation where Mr. Arsenault stated that
203 there is no record and no plan as the variance allows to add on to a conforming structure but it is
204 not known if this is a conforming structure. Ms. Dunn stated that she does not agree or
205 understand that concept; it is pre-existing non-conforming.

206
207 **A motion was made by Ms. Dunn to enter Deliberative session. Seconded by Mr. Shea. Roll**
208 **call vote: Ms. Gogumalla, Ms. Dunn, Chairman Scholz, Mr. Hughes, Mr. Shea- yes. Vote 5-**
209 **0. Motion passes.**

210
211 Ms. Dunn does believe it meets the 5 criteria. The actual footprint has a minimal change and the
212 lot is not in a congested area. It would not diminish any surrounding property values at all. There
213 are not many rectangular lots in the middle of a field in town. Mr. Shea is in agreement.
214 Chairman Scholz stated he also does believe it meets all 5 criteria. Mr. Hughes stated there is
215 minimal impact in the back of the lot. Mr. Shea stated he would be in favor of the drip line
216 infiltration. Chairman Scholz is not sure what the infiltration would “buy” on the lot as it is in
217 a wide-open field. Mr. Shea stated that if it is part of best practice, he would be in favor of it.

218
219 The Board had a discussion about the language in the variance application and how the overhang
220 of a previous change to the building impacted the variance measurement. The Board discussed
221 all of the relief that was being requested. Chairman Scholz stated he does not believe they need
222 relief for 12 feet and the side set backs are not being changed.

223
224 Ms. Dunn stated that just to be sure in this specific case, there will be an addition of volume in
225 the front and on the side; nothing is changing on the garage. Ms. Dunn stated that they are
226 talking about granting an addition for the variance. Ms. Dunn stated they are not talking about
227 the garage.

228
229 **A motion was made by Ms. Gogumalla to grant variance relief as requested for Case #20-**
230 **2020: Parcel 17-I-350 from Section(s) 406.2, 702 & Appendix A-1, to allow construction of**
231 **an addition to the existing year-round single-family dwelling (SFD). Specifically, from Sec.**

232 **406.2 to expand the volume of the SFD from 2,410 sf to 2,480 sf. in area and from 22,400**
233 **cu/ft to 24,000 cu/ft in volume, where the ordinance does not allow an increase in the area**
234 **and/or volume of the structure per plan submitted with a revision date of July 14, 2020**
235 **conditioned on the installation of drip line infiltration along the new addition from the edge**
236 **of pavers around the addition. Seconded by Mr. Hughes. Roll call vote: Ms. Gogumalla,**
237 **Ms. Dunn, Chairman Scholz, Mr. Hughes, Mr. Shea- yes.**

238
239 **Vote 5-0.**

240 **Motion passes.**

241 **The Chair advised of the 30-day appeal period.**

242
243 **A motion was made by Mr. Shea for Case #20-2020: Parcel 17-I-350 that the additional**
244 **setback relief requested is not required for the variance application. Seconded by Mr.**
245 **Hughes. Roll call vote: Ms. Gogumalla, Ms. Dunn, Chairman Scholz, Mr. Hughes, Mr.**
246 **Shea- yes.**

247
248 **Vote 5-0.**

249 **Motion passes.**

250
251
252 **Case #21-2020: Parcel 8-B-2000**

253 **Applicant - Benchmark Engineering, Inc.**

254 **Owner – Estate of Susan Murray & Phyllis Jarosky**

255 **Location – 124 Rockingham Road**

256 **Zoning District – Rural District**

257
258 Variance Relief is requested from **Section(s) 405.2, 405.3, 602.1, 702 & Appendix A-1**, to allow
259 construction of a duplex dwelling on a property zoned rural. Specifically, from **Sec. 405.2** to
260 allow expansion from 1,250 sf to 2,700 sf in area and from 23,600 cu/ft to 40,000 cu/ft in
261 volume, where the ordinance does not allow an increase in the area and/or volume of the
262 structure. And from **Sec. 405.3** to allow the proposed structure an increase in non-conformance,
263 where the ordinance does not allow an increase in the non-conformity of the structure. And from
264 **Sec. 602.1** to allow a duplex structure (condo type) to be constructed, where the ordinance does
265 not allow such use. And from **Sec. 702 & Appendix A-1**, to allow the proposed structure and
266 decks a 15' side yard setback from the northerly lot line and a 5' side yard setback from the
267 southerly lot line, where 30' is required. To allow a lot size of 38,000 +/- sf, where a minimum
268 land area of 50,000 sf is required. To allow 90' frontage on Rockingham Road, where 175' of
269 frontage is required.

270
271 Mr. Hughes read the case, the list of abutters, and the letter authorization into the record.

272
273 Mr. Joe Maynard of Benchmark Engineering addressed the Board and is representing the
274 applicant. Mr. Maynard stated that this house needs a lot of work. The house should be razed and
275 a new house should be constructed. The family has no intentions to move to that location and
276 would like to keep it as a rental property. Mr. Maynard stated that the water line extension from
277 Derry does help an application like this. The well is going away and municipal water could be
278 added to the property. Mr. Maynard stated that they did talk to the people who purchased the

condexes abutting this property and they are in support of the project.

Ms. Dunn asked about the previous uses on this and surrounding property. Mr. Maynard stated if municipal water is used than the land under the well radius can then be used in the loading calculations and it can be a different use as a result of that land loading. Mr. Maynard stated that the water line put a service stub under properties that currently exist on Route 28.

Ms. Gogumalla asked about the condos nearby. The condos were constructed recently and the letter in the package are from the people who bought those units. The people who bought those units are endorsing the project.

There was a footpath in the area and it is pretty overgrown now. Ms. Dunn asked if they had the legal right to this property to be able to access the property. Mr. Maynard stated that it is an access way that has been in existence since the 1970's or 1980's. There has always been a structure on the property. It has been in existence and it is no different than the older roads and people continue to utilize the areas. Ms. Dunn stated she understand what Mr. Maynard is saying about prescriptive easement. Chairman Scholz stated that he thinks they can proceed with the application and Chairman Scholz does not wish to delay the application over something that might not be in their jurisdiction.

Mr. Maynard read the 5 criteria contained in the public packet. Chairman Scholz stated that the more specific request might be 602.1.1 and this can be discussed later. Chairman Scholz asked what the Board had for questions. Ms. Dunn asked what would be done for proposed landscaping between the houses and Route 28. Ms. Dunn stated that it would be helpful to leave some of the vegetation between the house and the road. Ms. Dunn stated that the proposed condex is very close to other condexes. Ms. Dunn stated that it is not an unreasonable request but it has to blend with what is both rural and residential. Mr. Maynard stated that trees that are larger than 12 inches within that 50 feet would be retained. Mr. Maynard stated that anything 12-15 inches in diameter or larger should stay. Ms. Dunn stated that she thinks it would help transition this between the two condex areas.

Chairman Scholz stated that the proposal is largely outside the setback. Chairman Scholz stated that he would like to understand the placement of the condex. Mr. Maynard stated that many of the houses sit so far back from Route 28 because of ledge and it puts the yard area right open to Route 28. The proposed structure would face the road. Mr. Maynard stated that the yard area would be buffered. The proposal for 2 condexes on a single-family lot is the issue according to Chairman Scholz. Mr. Maynard stated that the lot has a legal in law apartment and that can happen on the lot. Chairman Scholz stated that he does not understand why it is not a single-family dwelling.

Ms. Gogumalla asked about any potential proposals for adjacent properties. Mr. Maynard does not believe there is any usable land for any other type of option.

Mr. Hughes read the letter from the Conservation Commission; storm water retention and a chance to see the septic plan in reference to the wetland were both mentioned in the letter.

Mr. Maynard read a letter from the Gordon Mountain Road Condominium Association which was a letter of support for the proposed application. They have been very pleased with the use and maintenance of their property and the managing company.

Mr. Maynard read another letter that stated a single-family home would not be the highest and best use of the property from the realtor, Nancy Bilodeau.

Mr. Maynard stated he is happy to go back to the Conservation Commission once the plan is complete.

A motion was made by Mr. Shea to enter Deliberative session. Seconded by Ms. Dunn. Roll call vote: Ms. Gogumalla, Ms. Dunn, Chairman Scholz, Mr. Hughes, Mr. Shea- yes. Vote 5-0. Motion passes.

Chairman Scholz struggles with the spot zoning and the development. Chairman Scholz stated that this is a rural zone and one single family detached lot is allowed. Chairman Scholz does not see the hardship because they can replace in kind. This is about changing what is allowed on the lot. Chairman Scholz does not think it meets 1, 2, or 5.

Chairman Scholz stated that they are discussing a duplex unit which he does not believe meets the approval. Ms. Dunn stated that the previous two condexes were approved in a similar way on a similar lot. Ms. Dunn stated that putting a condex on this property is not a surprise. Ms. Dunn asked if someone would want to live there as a single-family dwelling. Chairman Scholz stated that the argument that is being made could be counter to other arguments about building on water. Ms. Dunn stated that this property is unique. Mr. Hughes does not believe this meets the hardship test. Mr. Shea stated that it is in the character of what is being placed there.

A motion was made by Mr. Hughes for Case #21-2020: Parcel 8-B-2000 to deny relief as requested per plan submitted with a revision date of July 14, 2020. Seconded by Ms. Gogumalla. Roll call vote: Chairman Scholz, Ms. Gogumalla, Mr. Hughes- yes to deny. Ms. Dunn and Mr. Shea- no.

Vote 3-2.

Motion passes.

The Chair advised of the 30-day appeal period.

Reasons for denial:

Chairman Scholz- 1 (public interest), 2 (spirit of the ordinance), and 5 (hardship)

Ms. Gogumalla- 1 (public interest) and 2 (spirit of the ordinance)

Ms. Hughes- 5 (hardship)

A motion was made by Mr. Shea to adjourn at 10:52pm. Seconded by Ms. Dunn. Roll call vote: Ms. Gogumalla, Ms. Dunn, Chairman Scholz, Mr. Hughes, Mr. Shea- yes. Vote 5-0. Motion passes.

Respectfully submitted by Anitra Lincicum